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U.S. DISTRICT COURT EDNY

MAY 09 2016

UNITED STATES DISTRICT COURT FOR THE
EASTERN DISTRICT OF NEW YORK

LONG ISLAND OFFICE

Demetrius Hill, Pro se,
Plaintiff,

v.

Al Tisch, et al.,
Defendants.

REQUEST FOR RECONSIDERATION
OF GRANT OF SUMMARY
JUDGEMENT.
02-CV-3901 (DRH)

Comes now, Demetrius Hill, requesting
reconsideration of the Court's 2015 decision, in light of the
U.S. Court of Appeals decision in Hubbs v. Suffolk Cnty.
Sheriff's Dep't, 788 F.3d 54 (2nd Cir. 2015) which admonished all
Districts Courts:

"The burden, we repeat, is on the defendant to
establish at the outset that an administrative
remedy was "available" in the sense that a
grievance policy or procedure existed and
covered the dispute at hand. Only if a
Court determines that he has carried that
burden by reference to a "legally sufficient
Source," can it proceed to consider any
exceptions."

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DEFENDANTS HAVE FAILED AS A MATTER OF LAW TO DEMONSTRATE THE SCCF GRIEVANCE PROCESS WAS AVAILABLE FOR EXCESSIVE FORCE CLAIMS OR CLAIMS AGAINST MEDICAL.

Though Hubbs supra is different in location, but the facts are exceptionally similar, Plaintiff won't go through all the facts. Yet Plaintiff urges the Court to read the 2nd circuit's decision.

The Complaint filed by Plaintiff states he was sadistically assaulted and brutalized 3 days after arriving at SCCF. Plaintiff was "alternately housed" at SCCF, that is he was a NCCF prisoner but was not held there due to the fact his fiancée worked there at the time.

An unnamed nurse or medical person, after the assault stabbed Plaintiff with a needle injecting him with a unknown psychotropic drug that had severe side effect, which

Plaintiff later learned was Haldol, this was done against his will, and without any justification. Plaintiff was then left bloody, handcuffed and shackled lying in his own blood & vomit all night.

When Plaintiff was taken to court, two days later still suffering from side effects, a local judge ordered Plaintiff receive medical treatment, see, exhibit-A, re submitted. When Plaintiff attempted to file a grievance^① he was directed to file a complaint with the facility Internal Affairs unit, which he did, see, exhibit-B. Plaintiff gave a full detailed affidavit of ~~and~~ several claims subsumed within the complaint. Plaintiff's mother also complained to the Internal Affairs unit, see exhibit-C, Internal Affairs conducted an investigation, supposedly, and denied any wrong doing by any officer, see, exhibit-d. It was Plaintiff's belief based on what he was told by grievance officer Ketonen, Internal Affairs

① The grievance officer's name was Donna Ketonen

investigated all allegations of excessive force by SCCF staff. And Plaintiff believed

- a) medical complaints were outside the authority of the warden, Plaintiff believed they (medical staff) worked for a contract Hospital, and were Hospital staff, as they often wore Hospital garb;
- b) Excessive force, assaults by staff were outside the authority of the warden as was told to Plaintiff by the grievance coordinator and the internal Affairs officers - who did not wear SCCF C.O. uniforms;
- c) Other prisoners had told Plaintiff to file a complaint with internal Affairs, specifically the prisoners on Plaintiff's housing tier;

This is the exact same fact pattern, in terms of prisoners being told to complain about staff assault to internal Affairs

See, Roland v. Murphy, 289 F. Supp. 2d 321, 324 (E.D.N.Y. 2003)

(complaints to internal affairs unit); Vogeltang v. Riverhead County Jail,

2009 U.S. Dist. Lexis 1914 (2nd cir 2009),,,

and now Hubbs has the exact same allegations as to his attempts to exhaust the SCCF grievance process—he was directed to internal affairs. The only difference is Hubbs had tenacious attorneys who demonstrated to the Court of appeals that the SCCF and their self serving affidavits are subterfuge designed to prevent prisoners being able to find redress within the U.S. Courts, when they are sadistically assaulted by rogue racist corrections officers.

In light of the Hubbs decision Plaintiff request the Court reconsider its earlier decision on summary judgement and reinstate the excessive force claims and medical claims.

SCCF GRIEVANCE PROCESS IS
VAGUE, AND UNAVAILABLE TO
SATISFY THE PLRA OR THE
CONSTITUTIONAL RIGHT TO SEEK
REDRESS.

The defendants have relied on a SCCF rule book and

Self-Serving affidavits from individuals that were not the grievance officer at the time of the allegations within the Complaint. The non-grievable section of the rule book is unconstitutionally vague, and thus unable to satisfy the "availability" demand of the PLRA. As the Court of Appeals stated in Hubbs

"Defendants instead rely, as the district court did, on the inmate handbook and on the Rosenblatt affidavit. Both, however, fall well short of establishing as a matter of law that the SCCF grievance procedures applied to the Court holding facility. As to the first, the handbook's plain terms state that issues outside the Warden's control "will not be the subject of a grievance"...

Thus, far from establishing the availability of a grievance procedure at the Court holding facility, the handbook does nothing more than raise the question defendants would have it answer — namely, was what allegedly happened to Hubbs within the control of the Warden?

Hubbs id at 60.

Nothing in the rule book would alert prisoners that medical complaints were within the control of the warden and thereby grievable. And as internal affairs investigated the assault, took a affidavit, rendered a decision,,, and never once told Plaintiff to file a grievance.

The rule book is vague, and the Court should vacate its prior order reconsider all the facts and exhibits, and reinstate the excessive force claims and medical claim in accordance w/ the 2nd Circuit decision in Hubbs —

I declare under penalty of perjury the foregoing facts are true and correct to the best of his recollection

Executed May 3, 2016 28 USC 1746

CC: Arlene Zwilling
Cnty Atty:

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